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## Appeal Decision

Site visit made on 25 September 2017

**by Alexander Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13<sup>th</sup> October 2017**

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**Appeal Ref: APP/C3240/W/17/3177619**

**Land East & South East of Sheldar Bungalow/Covings/The Old Stables, Back Lane, Tibberton, Newport, Shropshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by The DMA Trust against the decision of Telford and Wrekin Council.
  - The application Ref TWC/2016/0785, dated 12 August 2016, was refused by notice dated 19 January 2017.
  - The development proposed is a residential development of up to 14 dwellings and associated infrastructure. Permission is sought for access with all other matters reserved.
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### Decision

1. The appeal is allowed and outline planning permission is granted for a residential development of up to 14 dwellings and associated infrastructure at Land East & South East of Sheldar Bungalow/Covings/The Old Stables, Back Lane, Tibberton, Newport, Shropshire in accordance with the terms of the application, Ref TWC/2016/0785, dated 12 August 2016, subject to the conditions contained within the Schedule attached to this decision.

### Procedural Matter

2. I have used the description of the site as set out in the Decision Notice as this is a more accurate description than that set out in the application form.
3. The application was submitted in outline, with only access to be determined at this stage. I have determined the appeal on that basis. A plan was submitted with the application indicating the site layout of the proposal. However, this plan is clearly labelled as 'Illustrative Layout' and I have considered it as such.
4. A revised plan was submitted with the appeal. This plan indicates that the private road serving the appeal site would be widened in parts to ensure that it is 4.1m wide along its entire length. There is no evidence that this plan has been the subject of public consultation and given the nature of the revision it could prejudice other parties. In particular, the widened parts of the road would be closer to the neighbouring residential properties. Therefore, I have determined the appeal on the basis of the plans considered by the Council in their determination of the planning application.
5. A signed and dated section 106 agreement, dated 15 September 2017, was submitted with the appeal. The agreement relates to the provision of

affordable housing, education, highway and footpath improvements and open space. I shall refer to this later.

### **Application for costs**

6. An application for costs was made by The DMA Trust against Telford and Wrekin Council. This application is the subject of a separate Decision.

### **Main Issues**

7. The main issues are the effect of the development on highway safety and the living conditions of the occupants of the neighbouring residential properties, with regard to noise and disturbance.

### **Reasons**

#### *Highway Safety*

8. Access to the appeal site is via a private road leading directly off Back Lane and currently serves two residential properties, Sheldar and Covings. The private road has a tarmac surface which leads to a grassed area to the front of the access gate leading to the appeal site.
9. The Council confirm that their objection to the proposal is not with regard to the effect of the development on the free-flow of traffic within the wider highway network. In respect of highway safety, the Council's primary concern seems to be the 22m stretch of road which would be only 3m in width whereas the remaining 47.5m of road would be 4.1m wide and allow for cars to pass each other. Whilst two cars would not be able to pass each other at the 3m wide stretch, given the scale of the development and the clear forward visibility along the length of the road, I do not consider that this would result in any detrimental effect on pedestrian or highway safety. Road users would clearly see each other in either direction and wait/manoeuvre accordingly. I note that the local highway authority conclude similarly and raise no objection to the proposal.
10. The development would increase the amount of traffic using the local highway network, which I acknowledge is used by agricultural vehicles, which is not uncommon in rural areas. However, there is no substantive evidence to indicate that it would increase the amount of traffic to such an extent that it would significantly harm highway safety or impede refuse or emergency vehicles.
11. I note the concern that the proposed footpath could encourage parents to park on the private road to drop off/pick up their children. However, given the relatively narrow width of the road, it would likely discourage drivers from parking on it. I have also had regard to the speed of traffic along the road, in particular the 3m wide section. Given that this stretch is only relatively short and there is clear visibility, it is unlikely that vehicles would be able to excessively speed to the extent that it would cause a highway danger.
12. I find therefore that the proposal would not result in any severe harm to highway safety. The Council has not referred to any local or national policies that they consider the proposal to be in conflict with. Nevertheless, I find that it would accord with paragraph 32 National Planning Policy Framework (the Framework), which states that development should only be prevented or

refused on transport grounds where the residual cumulative effects of development are severe.

### *Living conditions*

13. Four properties share a boundary with the private road. As a result of the proposed development the use of the road would significantly increase, with approximately an additional 15 vehicular movements in the AM peak time and an additional 10 vehicular movements in the PM peak time. The application was supported by a Noise Assessment, dated August 2016, carried out by Waterman Infrastructure & Environment Limited. The assessment found that whilst the increase in traffic movements would result in an increase in noise during peak times, it would satisfy the WHO and BS8233 noise criteria to safeguard the majority of the population from serious annoyance. Whilst I acknowledge the concerns raised regarding the effect of the development on the occupants of the neighbouring properties there is no substantive evidence to indicate that it would result in any significant harm to their living conditions regarding noise, contrary to the findings of the Noise Assessment.
14. I note the concerns raised regarding cars reversing across the driveways of Sheldar and Covings in order to pass each other. However such instances would likely be infrequent as there would be adequate forward visibility along the 4.1m wide stretch of road to ensure that drivers can see an oncoming road user and wait until they have passed the narrower stretch before proceeding. Furthermore, whilst there would be an increase in cars passing these properties, I do not consider that this would amount to any significantly harmful effect on their living conditions.
15. I have also had regard to the effect of car headlights shining into the windows of the neighbouring properties and disturbing their occupants. However, given the orientation of the neighbouring dwellings in relation to the road and existing boundary treatments I do not consider that any light overspill from cars travelling along the road would unacceptably harm the living conditions of the neighbouring occupants.
16. In addition, whilst during the construction of the dwellings there would be noise and disturbance, this would be only temporary and could be adequately controlled through the imposition of an appropriately worded condition.
17. I find therefore that the proposal would not significantly harm the living conditions of the occupants of neighbouring residential properties. Again the Council have not cited any local or national policies that they consider the proposal would conflict with. Nevertheless, I find that it would accord with Paragraph 17 of the Framework, which, amongst other things, seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

### **Other Matters**

18. The planning obligations in the s106 agreement have to meet the tests in Community Infrastructure Levy Regulations (CIL) Regulation 122 in order for them to be taken into account in my determination of this appeal. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonable

related in scale and kind to the development. These tests are also identical to those set out in paragraph 204 of the Framework.

19. The s106 agreement would secure on-site provision of 40% affordable housing or five affordable dwellings; contributions towards education needs; highway and footpath improvements and the provision of public open space. From the evidence before me, I am satisfied that the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework.
20. Tibberton is identified in the development plan as a village within the rural area for residential growth. I note that there have been a number of new housing developments within Tibberton. However, there is no substantive evidence that the additional 14 dwellings proposed would undermine the Council's housing strategy. The appeal site is located within what is described by the Council as the quadrangle of the village of Tibberton. It is read as a natural extension of the village and does not represent an unacceptable encroachment into the open countryside. Therefore, I do not consider that it would have a significantly harmful effect on the character and appearance of the area. I have had regard to the appeal referred to me by local residents, appeal refs APP/C3240/W/17/3167843 and APP/C3240/W/15/3003907. However, there is no evidence before me that the dismissed schemes were as closely related to the built form of the settlement as the current proposal.
21. Whilst there may be opportunities for the site to be served by alternative access points, these do not form part of the proposal. I have determined the appeal on an assessment of the individual merits of the proposal.
22. Details regarding boundary treatments have been reserved for future consideration and therefore do not form part of the appeal proposal in this instance. I have also had regard to the existing neighbours' right of access over the road and the effect of works along the road impeding this right. However, such matters have not had a material bearing on my assessment of the planning merits of the appeal proposal.

### **Conditions**

23. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework. For the avoidance of doubt it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
24. In the interests of highway safety, conditions are necessary regarding the approval of new roads, footpaths, service margins, street lighting, access, parking, turning facilities and visibility splays.
25. Conditions are also necessary regarding foul and surface water drainage in the interests of highway safety and the avoidance of flooding.
26. In the interests of public safety, a condition is necessary regarding the approval of details for the pedestrian footpath between the site and the playing field.
27. A Site Environment Management Plan is necessary in the interests of highways safety and to safeguard the living conditions of neighbouring occupants.

28. In the interests of the character and appearance of the area conditions are necessary regarding protecting existing hedgerows and trees.
29. In the interests of protecting bats, birds and hedgehogs, conditions are necessary regarding the erection of bat, bird and hedgehog boxes and that any external lighting should be approved.
30. Landscaping is a reserved matter and therefore a separate condition requiring a landscaping scheme is not necessary. Similarly, a condition is not necessary requiring details pertaining to the number of units, the means of enclosure of the site, the levels of the site, means of access for disabled people and the finished floor levels as these also fall within the reserved matters.
31. It is essential that the requirements of conditions 5, 6, 7, 8, 9 and 10 are agreed prior to the development commencing to ensure an acceptable form of development in respect of highway safety, protecting residential amenity and flood avoidance.

### **Conclusion**

32. For the reasons given above, having regard to all matters raised, the appeal is allowed.

*Alexander Walker*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: SK01 and 001 Rev A01.
- 5) No development shall commence until full design and construction details of any new roads, footways, footpath Links, carriageway pinch point features, service margins, longitudinal sections, retaining features, street lighting, accesses and visibility splays have been submitted to, and approved in writing by the local planning authority. The agreed details shall be fully implemented prior to the first occupation of the hereby approved dwellings.
- 6) No development shall commence until the details of visibility splays of 2.4m x 43m have been provided in accordance with details to be first submitted to and approved in writing by the local planning authority. The

visibility splays shall thereafter be kept clear of all obstructions to visibility over a height of 600mm above the adjacent carriageway level.

- 7) No development shall commence until details for the parking, turning, loading and unloading of vehicles have been submitted to and approved in writing by the local planning authority. The approved scheme shall be laid out and surfaced prior to the first occupation of the hereby approved dwellings and thereafter be kept clear and maintained at all times for that purpose.
- 8) No development shall commence until details of a pedestrian footpath link between the site and the playing field have been submitted to and approved in writing by the local planning authority. The agreed details are to be fully implemented prior to the first occupation of the hereby approved dwellings.
- 9) No development shall commence until a scheme for both foul and surface water drainage has been submitted to and approved in writing by the local planning authority. The details of the proposed surface water drainage scheme will be based on sustainable drainage (SuDS) principles and shall include:

- (If soakaway drainage is proposed):

- a) The results of soakaway tests carried out 3 times in accordance with BRE Digest 365.

- b) Soakaway calculations, based on the worst case result from the on-site tests.
- c) A detailed drainage design including a plan showing the location of any soakaway. Soakaways should be located no less than 5m from any building or boundary.

- (If drainage to a watercourse, sewer or other waterbody is proposed):

- a) A detailed drainage design restricting surface water discharge to 5 litres per second per hectare and attenuating all flows up to and including the 1 in 100 year event + 30% for climate change.

- b) A drainage layout showing the location of any attenuation and flow control features. Any attenuation or flow control features serving more than one should be located in an area of shared space or POS.

The approved details shall be implemented in full prior to the first occupation of the hereby approved dwellings.

- 10) No development shall commence until a Site Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:

- Location of site compound
- Parking of vehicles of site personnel, operatives and visitors
- Loading and unloading of plant and materials
- Storage of plant and materials in constructing the development
- Storage of oil, fuel and chemicals
- Protection of ecology and archaeology
- Prevention of mud being deposited on highway

- Measure for the control and reduction of noise from construction works
- Measures for control of construction traffic within the site and on the surrounding highway network
- Hours of operation of construction works and others works on the site
- Measures for the monitoring and enforcement of the plans
- The erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate

The agreed plan shall be adhered to throughout the construction period for the development.

- 11) All existing hedges, hedgerows or trees shall be retained, unless shown on the approved drawings as being removed. All hedges, hedgerows and trees on and immediately adjoining the site shall be protected from damage for the duration of works on the site, by the erection of protective fencing in accordance with British Standards 5837 : 2012. Any parts of hedges, hedgerows or trees removed without the local planning authority's consent or which die or become, in the opinion of the local planning authority, seriously diseased or otherwise damaged within five years following completion of the approved development, shall be replaced as soon as is reasonably practicable and, in any case, by no later than the end of the first available planting season, with plants of such size and species and in such positions as approved in writing with the local planning authority.
- 12) Prior to the first occupation of the dwellings hereby permitted a suite of artificial nesting and/or roosting boxes shall be erected on the site. The type and location of the boxes shall be submitted to and agreed in writing with the local planning authority and the scheme shall then be undertaken in accordance with the agreed details. The boxes shall be retained thereafter.

The following artificial nesting/roosting boxes shall be provided:

1. A total of 2 woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species
  2. A total of 4 woodcrete artificial nesting boxes suitable for bird species such as robin, blackbird and tit species
  3. A total of 2 woodcrete artificial nesting boxes suitable for house sparrow
  4. A total of 2 woodcrete artificial nesting boxes suitable for swifts
  5. A total of 2 hedgehog boxes including one summer and 1 hibernation box
- 13) Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust Interim Guidance: Recommendations to help minimise the impact artificial lighting.